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**JOHN JACOB OLIVAS**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

**Plaintiff,**

V.

## JOHN JACOB OLIVAS.

**Defendant.**

Case No. ED CR 18-00231-JGB

**JOHN JACOB OLIVAS' AMENDED  
NOTICE OF MOTION AND  
MOTION *IN LIMINE* TO EXCLUDE  
OR LIMIT "SEXUAL ASSAULT  
EXPERT" TESTIMONY; EXHIBIT**

**Hearing Date:** August 23, 2021

Hearing Time: 2:00 p.m.

**Location:** Courtroom of the Honorable  
Jesus G. Bernal

PLEASE TAKE NOTICE THAT defendant, John Jacob Olivas, by and through his counsel of record, Deputy Federal Public Defenders Angela C. C. Viramontes and Craig A. Harbaugh, moves this Honorable Court for an order excluding or limiting Dr. Janine S. Shelby's expert testimony on sexual assault. This motion is made pursuant to Federal Rules of Evidence 401, 402, 403, 702, 703, and 704.

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This motion is based on the attached memorandum of points and authorities, any declarations of counsel and any exhibits attached hereto, all files and records in this case, and such further information as may be provided to the Court with respect to this motion.

Respectfully submitted,

**CUAUHTEMOC ORTEGA  
Federal Public Defender**

DATED: July 20, 2021

By /s/ *Angela C. C. Viramontes*

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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                   **I. INTRODUCTION AND STATEMENT OF FACTS**

3                   The defense objects to Dr. Shelby's proposed testimony on the grounds that it  
4                   violates Federal Rules of Evidence 401, 402, 403, 702, 703, and 704.

5                   On July 18, 2019, the government gave notice that it intends to call Dr. Janine  
6                   Shelby as an expert witness to testify as to the following (*see Ex. A*):

7                   1. Common responses, reactions, and behaviors of sexual  
8                   assault and interpersonal violence victims, including testimony  
9                   about the reasons why many victims do not report sexual  
10                  assault or interpersonal violence (e.g., fear they will not be  
11                  believed by authorities, their families, or their friends; fear of  
12                  retaliation; desire to avoid stigmatization as a sexual distress  
13                  from acknowledging the reality of the abuse) as well as similar  
14                  reasons why victims often delay reporting, report in a  
15                  piecemeal fashion, or never report these crimes. These  
16                  responses include internally and externally derived fears, such  
17                  as fear of unwanted or frightening emotional repercussions, as  
18                  well as fear of physical or emotional retaliation by the abuser.

19                  2. The influence of mental health, culture, knowledge of  
20                  rights/education, as well as childhood, familial, personal, and  
21                  prior relationship experiences on how victims respond to  
22                  sexual assault and traumatic events. These may include, but  
23                  will not be limited to, testimony that some cultural/subcultural  
24                  experiences can lead to victims' silence, responses that appear  
25                  to be passive, or behaviors that seem supportive toward those  
26                  to whom the victim has made a commitment; sometimes  
27                  individuals with less knowledge, education, or less familiarity  
28                  with healthy relationships and/or their entitlement to  
                        relationships free from abuse are less likely to report  
                        abuse/assault; and that prior childhood, familial, personal, or  
                        interpersonal relationship experiences, such as being  
                        disbelieved when reporting abusive experiences, being or  
                        seeing others ostracized, shamed, or stigmatized following  
                        abusive experiences/disclosures, or expecting abuse as an  
                        inevitable part of a relationship may lead individuals to abstain  
                        from reporting, delay reporting, minimize information in  
                        reports, engage in piecemeal reporting patterns, and/or  
                        continue interactions with their abusers.

29                  3. The roles that power imbalances and control dynamics in  
30                  interpersonal relationships play in how victims may respond to  
31                  sexual assault and interpersonal violence. These may include,  
32                  but will not be limited to, testimony that victims with power  
33                  deficits relative to their partners in a relationship—whether it  
34                  be due to significant discrepancies in financial stability, social  
35                  power, physical power, mental health, or education/  
36                  knowledge—may continue to interact with their abusers.

1           4. The roles that stigma and sense of shame from being a victim  
2           of sexual or interpersonal violence play in how victims interact  
3           with their abusers. These may include, but will not be limited  
4           to, testimony that fear of being labeled a victim leads some  
5           victims to continue to interact with their abusers, in attempt to  
6           avoid stigmatization and an overwhelming sense of shame. The  
7           testimony may further include explanations that the desire to  
8           avoid stigmatization and shame can provide an incentive for  
9           survivors to continue their interactions with abusers.

10           5. Reasons why a victim of sexual assault and interpersonal  
11           violence might delay or forego reporting or engage in selective  
12           reporting or piecemeal reporting over time. The reasons may  
13           include, but will not be limited to, the following: fear of  
14           retaliation; belief that reporting will accomplish little to bring  
about safety; desire to avoid stigma; few mental health  
resources to cope with the demands of reporting; intense  
distress when remembering abusive episodes/avoidance of  
trauma-related topics; dissociative coping responses that  
interfere with memory processes; other neurobiological  
responses to trauma; desire to re-interpret sexual assault as a  
consensual act to avoid facing the reality of the abusive nature  
of the relationship; fear of not being believed; belief that one  
cannot change one's circumstances, but must merely endure  
them; and other reactions related to childhood, multiple, or  
extreme experiences of sexual assault/traumatic events.

15           6. Reasons why a victim of sexual assault and trauma might  
16           remain in a relationship, romantic or otherwise, where the  
17           victim continues to suffer at the hands of the abuser. The  
18           reasons may include, but will not be limited to, staying in  
relationships because of fear of further physical, sexual, or  
emotional abuse and/or retaliation for leaving; having mental  
health conditions that make it more difficult for a person to end  
the relationship; holding the maladaptive belief that  
violence/abuse is part of all relationships; hoping that the  
abuser will stop and change for the better; having a reduced  
sense of personal agency, such as the belief that there is little  
or nothing the victim can do to escape the relationship;  
vulnerability to dependency on the abuser, in cases where the  
abuser has isolated the victim and cultivated a strong sense of  
dependency on the abuser; and holding cultural/religious  
beliefs that a person should remain in a relationship despite the  
shortcomings or mistakes made by the person's romantic  
partner.

25           7. Coping mechanisms used by victims of sexual assault and  
26           other forms of trauma, including but not limited to denial,  
27           wishful thinking, avoidance of the assault- and trauma-related  
28           topics due to significant distress associated with these  
recollections; use maladaptive problem-focussed coping (e.g.,  
trying to enhance safety by acquiescing, or complying, or  
attempting to appease the abuser), maladaptive use of emotion-

1 focused coping (e.g., using strategies to endure one's  
2 suffering), and other cognitive strategies, such as minimizing  
3 or rationalizing the abuser's behavior as less egregious than is  
true or as beyond the control of the abuser.

4 8. Characteristics shared by domestic violence perpetrators,  
5 including but not limited to mental health/personality disorders  
6 involving antisocial traits, mental health/personality disorders  
7 involving borderline traits, acceptance of male dominance  
ideology, lack of empathy, narcissism, preoccupation with the  
desire to control or to have power over others, sexual arousal  
linked to aggression/violence, and exposure to family-of-origin  
interpersonal violence.

9 9. Typical methods by which some perpetrators of domestic  
10 violence and sexual assault gain and maintain power and  
control over victims, including but not limited to creating  
11 emotional, financial, physical, and/or some other type of  
dependence; isolating the victim from family members and  
friends; repeatedly attempting to undermine the victim's self-  
12 esteem; and gradual escalation of abuse and trauma.

## 13 II. LEGAL ARGUMENT

14 Fed. R. Evid. 702 states:

15 "A witness who is qualified as an expert by knowledge, skill,  
experience, training, or education may testify in the form of  
16 an opinion or otherwise if:

- 17 (a) the expert's scientific, technical, or other specialized  
knowledge will help the trier of fact to understand the  
evidence or to determine a fact in issue;
- 18 (b) the testimony is based on sufficient facts or data; and
- 19 (c) the testimony is the product of reliable principles and  
methods;
- 20 (d) the expert has reliably applied the principles and methods  
to the facts of the case."

21 Thus, a district court's role is to act as a gatekeeper, and "ensur[e] that an  
22 expert's testimony both rests on a reliable foundation and is relevant to the task at  
23 hand." *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 597, 125  
24 L. Ed. 2d 469 (1993). This requirement applies to non-scientific fields of expertise,  
25 such as the case here. *Kumho Tire Co., Ltd v. Carmichael*, 526 U.S. 137, 141, 119 S.  
26 Ct. 1167; 143 L. Ed. 2d 238 (1999). Thus, the Court must assess Dr. Shelby's  
27 qualifications to testify about each subject independently and to independently consider  
28 the relevance of each subject area and the reliability of each area of the proposed

1 testimony. The Court must also consider Rules 401, 702, 703, 704, and 403 in carrying  
2 out its gatekeeper function.

3 Under Rule 401, evidence is relevant if: “(a) it has any tendency to make a fact  
4 more or less probable than it would be without the evidence; and (b) the fact is of  
5 consequence in determining the action.” Fed. R. Evid. 401. As stated in the  
6 government’s expert disclosure and as argued below, much of what Dr. Shelby will  
7 testify about is not relevant to whether or not Mr. Olivas committed deprivation of  
8 rights under color of law.

9 Rule 703 contemplates that a court will have fully considered all aspects of an  
10 expert witness’ proposed testimony before the witness is presented to the jury:

11 “An expert may base an opinion on facts or data in the case  
12 that the expert has been made aware of or personally  
13 observed. If experts in the particular field would reasonably  
14 rely on those kinds of facts or data in forming an opinion on  
15 the subject, they need not be admissible for the opinion to be  
admitted. But if the facts or data would otherwise be  
inadmissible, the proponent of the opinion may disclose them  
to the jury only if their probative value in helping the jury  
evaluate the opinion substantially outweighs their prejudicial  
effect.”

16  
17 Fed. R. Evid. 703. Furthermore, under Rule 703, a court must determine in advance  
18 whether or not hearsay sources are of a type reasonably relied upon by experts in the  
19 field and that they are in fact necessary predicates for relevant opinions or inferences,  
20 contained in a witness’ testimony. The Court will need to consider the admissibility of  
21 Dr. Shelby’s testimony under Fed. R. Evid. 704 as well.

22 Finally, under Rule 403, the Court must weigh the probative value of Dr.  
23 Shelby’s testimony against the risk of “unfair prejudice, confusing the issues,  
24 misleading the jury, undue delay, wasting time, or needlessly presenting cumulative  
25 evidence.” Fed.R. Evid. 403. This rule exists to prevent the danger that exists in this  
26 case, of luring “the factfinder into declaring guilt on a ground different from proof  
27 specific to the offense charged.” *Old Chief v. U.S.*, 519 U.S. 172, 180, 17 S. Ct. 644;  
28 136 L. Ed. 2d 574 (1997). “Expert evidence can be both powerful and quite misleading

1 because of the difficulty in evaluating it.” *Daubert*, 509 U.S. at 595. Here, Dr. Shelby’s  
2 proposed testimony is not only unfairly prejudicial but it will mislead the jury, and  
3 create undue delay and waste time.

4 **A. The Court should exclude domestic violence perpetrator testimony**

5 First, under Rule 401, the Court should exclude Dr. Shelby’s regarding Topics 8  
6 and 9<sup>1</sup>, which the defense refers to as domestic violence perpetrator testimony, because  
7 her testimony is irrelevant. Testimony on perpetrators’ mental illness and/or personality  
8 disorders is simply irrelevant to whether Mr. Olivas committed deprivation of rights  
9 under color of law, deprivation of right to bodily integrity because it has no bearing on  
10 the underlying facts of an assault nor does it establish whether an accused actually  
11 committed a crime. Moreover, Mr. Olivas has not put mental health conditions and/or  
12 personality disorders at issue; he did *not* give notice of expert evidence of a mental  
13 condition. Whether Mr. Olivas was exposed to family-of-origin interpersonal violence  
14 is also irrelevant, moreover there is no evidence that he was exposed. Furthermore, the  
15 term “perpetrator” is vague at best, as well as “male dominance ideology”.

16 Testimony about perpetrators’ “typical methods” has no bearing on the  
17 underlying facts of deprivation of rights under color law, deprivation of bodily  
18 integrity, nor does it establish whether an accused actually committed a crime.  
19 Furthermore, testimony about perpetrator’s “typical methods” is prohibited profile  
20 evidence. *See U.S. v. Gillespie*, 852 F.2d 475, 480 (9th Cir. 1988) (“testimony of

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23       <sup>1</sup> Topic 8. Characteristics shared by domestic violence perpetrators, including  
24 but not limited to mental health/personality disorders involving antisocial traits, mental  
25 health/personality disorders involving borderline traits, acceptance of male dominance  
ideology, lack of empathy, narcissism, preoccupation with the desire to control or to  
have power over others, sexual arousal linked to aggression/violence, and exposure to  
family-of-origin interpersonal violence.

26       Topic 9. Typical methods by which some perpetrators of domestic violence and  
27 sexual assault gain and maintain power and control over victims, including but not  
28 limited to creating emotional, financial, physical, and/or some other type of  
dependence; isolating the victim from family members and friends; repeatedly  
attempting to undermine the victim’s self-esteem; and gradual escalation of abuse and  
trauma.

1 criminal profiles is highly undesirable as substantive evidence because it is of low  
 2 probativity and inherently prejudicial.”).

3 In addition, Dr. Shelby’s testimony on topics 8 and 9 is offender characteristics  
 4 testimony, and expert opinion on characteristics is only relevant if Mr. Olivas fits those  
 5 characteristics. Thus, Dr. Shelby’s proposed testimony inherently opines on Mr. Olivas’  
 6 guilt, deprives Mr. Olivas of the jury’s uninfluenced determination of facts, ultimately  
 7 denying Mr. Olivas a fair trial.

8 Second, under Rules 702 and 703, there is no explanation as to how Dr. Shelby’s  
 9 experience leads to her conclusions. While the rule permits an expert witness to rely  
 10 “solely or primarily on experience,” the witness “must explain how that experience  
 11 leads to the conclusion reached, why that experience is a sufficient basis for the  
 12 opinion, and how that experience is reliably applied to the facts.” Fed. R. Evid. 702  
 13 advisory committee’s notes (to the 2000 amendments). In other words, “[t]he trial  
 14 court’s gatekeeping function requires more than simply taking the expert’s word for it.”  
 15 *Id.*, (quoting *Daubert*). According to the government’s notice, Dr. Shelby does not treat  
 16 perpetrators, nor has she studied and published on perpetrators. Thus, based on the  
 17 notice, Dr. Shelby’s opinion is not based on empirical evidence or studies on  
 18 perpetrators. Rather, her opinion seems to be based on anecdotal examples from  
 19 treating abused women and children. Accordingly, her opinion on topics 8 and 9  
 20 exceeds the bounds of her expertise and she seeks to give opinion testimony concerning  
 21 subjects for which she is not qualified. *See U.S. v. Chang*, 207 F.3d 1169, 1172-73 (9th  
 22 Cir. 2000) (“It was not an abuse of discretion . . . to determine that [the expert’s]  
 23 ‘practical experience in international finance’ did not amount to practical experience  
 24 determining whether a particular security is counterfeit . . .”). Her testimony on topics 8  
 25 and 9 must be excluded.

26 Finally, under Rule 403, Dr. Shelby’s testimony regarding topics 8 and 9 should  
 27 be excluded. Testimony that domestic violence perpetrators suffer from mental illness  
 28 and/or personality disorders is inflammatory on its face given the stigmatizations and

1 prejudice associated with mental illness and personality disorders and will unfairly  
 2 prejudice Mr. Olivas, as well as divert the jury's attention from material issues in trial.  
 3 Furthermore, admission of this testimony will confuse issues at trial and mislead the  
 4 jury as mental illness/personality disorders and domestic violence perpetrator profile  
 5 testimony are not material issues in the trial. Admission of testimony regarding mental  
 6 illness/personality orders will waste time as it will create a mini-trial as to what  
 7 constitutes a particular illness and/or disorder, how they are diagnosed, what are the  
 8 symptoms, etc. Thus, Rule 403 requires that testimony of topics 8 and 9 be excluded.

9 **B. Dr. Shelby's proposed testimony does not satisfy Rules 701, 702, 703,  
 10 and 704**

11 In terms of topic 1<sup>2</sup>, the government seeks to have Dr. Shelby testify to "common  
 12 responses, reactions, and behaviors of sexual assault victims . . .". If a response is  
 13 "common" then no "scientific, technical or other specialized knowledge" is needed.  
 14 Furthermore, allowing Dr. Shelby to testify as to topic 1 would bolster the  
 15 government's allegations and invade the province of the jury in deciding witness  
 16 credibility as to the complainants responses, reactions, and behaviors. In addition,  
 17 based on the notice, it appears Dr. Shelby's proposed testimony about what she  
 18 believes to be "common" is based on her personal experiences. Without knowing the  
 19 sample size of her cases or the population size of reported, and more importantly,  
 20 substantiated sexual abuse cases, the Court cannot conclude her experiences are  
 21 sufficient to justify her conclusion. Thus, testimony regarding topic 1 should be

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24                   2 Topic 1 states: Common responses, reactions, and behaviors of sexual assault  
 25 and interpersonal violence victims, including testimony about the reasons why many  
 26 victims do not report sexual assault or interpersonal violence (e.g., fear they will not be  
 27 believed by authorities, their families, or their friends; fear of retaliation; desire to  
 28 avoid stigmatization as a sexual distress from acknowledging the reality of the abuse)  
 as well as similar reasons why victims often delay reporting, report in a piecemeal  
 fashion, or never report these crimes. These responses include internally and externally  
 derived fears, such as fear of unwanted or frightening emotional repercussions, as well  
 as fear of physical or emotional retaliation by the abuser.

1 excluded under Rule 702. Such testimony is also unfairly prejudicial as it is  
2 inflammatory on its face, and like to confuse issues and waste time.

3 As to topic 2<sup>3</sup>, Dr. Shelby's proposed testimony is about victim's responses to  
4 sexual assault and traumatic events. The government fails to explain how a range of  
5 responses based on an individual's life experiences, is not common knowledge or why  
6 a juror would need help from an expert to understand and evaluate why victims have  
7 different responses based on their life experiences. Allowing Dr. Shelby to testify as to  
8 topic 2 would bolster the government's allegations and invade the province of the jury  
9 in deciding witness credibility about responses. In addition, based on the notice, it  
10 appears Dr. Shelby's proposed testimony is based on her personal experiences.  
11 Without knowing the sample size of her cases or the population size of reported, and  
12 more importantly, substantiated sexual abuse cases, the Court cannot conclude her  
13 experiences are sufficient to justify her conclusion. Thus, testimony regarding topic 2  
14 should be excluded under Rule 702. Such testimony is also unfairly prejudicial as it is  
15 inflammatory on its face, and like to confuse issues and waste time.

16 As to topic 3<sup>4</sup>, Dr. Shelby's proposed testimony is about how power imbalances  
17 and control dynamics effect how victims responds to sexual assault and interpersonal

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19       <sup>3</sup> Topic 2. The influence of mental health, culture, knowledge of rights/education,  
20 as well as childhood, familial, personal, and prior relationship experiences on how  
21 victims respond to sexual assault and traumatic events. These may include, but will not  
22 be limited to, testimony that some cultural/subcultural experiences can lead to victims'  
23 silence, responses that appear to be passive, or behaviors that seem supportive toward  
24 those to whom the victim has made a commitment; sometimes individuals with less  
25 knowledge, education, or less familiarity with healthy relationships and/or their  
entitlement to relationships free from abuse are less likely to report abuse/assault; and  
that prior childhood, familial, personal, or interpersonal relationship experiences, such  
as being disbelieved when reporting abusive experiences, being or seeing others  
ostracized, shamed, or stigmatized following abusive experiences/disclosures, or  
expecting abuse as an inevitable part of a relationship may lead individuals to abstain  
from reporting, delay reporting, minimize information in reports, engage in piecemeal  
reporting patterns, and/or continue interactions with their abusers.

26       <sup>4</sup> Topic 3: The roles that power imbalances and control dynamics in  
27 interpersonal relationships play in how victims may respond to sexual assault and  
interpersonal violence. These may include, but will not be limited to, testimony that  
28 victims with power deficits relative to their partners in a relationship—whether it be

1 violence. The government fails to explain how power imbalances and control dynamics  
 2 in relationships, are not common knowledge or why a juror would need help from an  
 3 expert to understand and evaluate this. Allowing Dr. Shelby to testify as to topic 3  
 4 would bolster the government's allegations and invade the province of the jury in  
 5 deciding witness credibility about responses to power imbalances and control  
 6 dynamics. In addition, based on the notice, it appears Dr. Shelby's proposed testimony  
 7 is based on her personal experiences. Without knowing the sample size of her cases or  
 8 the population size of reported, and more importantly, substantiated sexual abuse cases,  
 9 the Court cannot conclude her experiences are sufficient to justify her conclusion.  
 10 Thus, testimony regarding topic 3 should be excluded under Rule 702. Such testimony  
 11 is also unfairly prejudicial as it is inflammatory on its face, and like to confuse issues  
 12 and waste time.

13 As to topic 4<sup>5</sup>, Dr. Shelby's proposed testimony is about how the stigma and  
 14 shame victims feel plays into how they interact with their abusers. The government  
 15 fails to explain how feeling shame and stigma as a result of being abused and then the  
 16 shame and stigma effecting how a victim interacts with her abuser, is not common  
 17 knowledge or why a juror would need help from an expert to understand and evaluate  
 18 this. Allowing Dr. Shelby to testify as to topic 4 would bolster the government's  
 19 allegations and invade the province of the jury in deciding witness credibility about  
 20 how the complainants in this case allegedly interacted with Mr. Olivas. In addition,  
 21 based on the notice, it appears Dr. Shelby's proposed testimony is based on her  
 22 personal experiences. Without knowing the sample size of her cases or the population

23  
 24 due to significant discrepancies in financial stability, social power, physical power,  
 25 mental health, or education/knowledge—may continue to interact with their abusers.

26       <sup>5</sup> Topic 4: The roles that stigma and sense of shame from being a victim of  
 27 sexual or interpersonal violence play in how victims interact with their abusers. These  
 28 may include, but will not be limited to, testimony that fear of being labeled a victim  
 leads some victims to continue to interact with their abusers, in attempt to avoid  
 stigmatization and an overwhelming sense of shame. The testimony may further  
 include explanations that the desire to avoid stigmatization and shame can provide an  
 incentive for survivors to continue their interactions with abusers.

1 size of reported, and more importantly, substantiated sexual abuse cases, the Court  
2 cannot conclude her experiences are sufficient to justify her conclusion. Thus,  
3 testimony regarding topic 4 should be excluded under Rule 702. Such testimony is also  
4 unfairly prejudicial as it is inflammatory on its face, and like to confuse issues and  
5 waste time.

6 As to topic 5<sup>6</sup>, Dr. Shelby's proposed testimony is about reasons why a victim  
7 might delay, forego, selectively, or piecemeal report. The government fails to explain  
8 how a range of reporting reasons and responses, is not common knowledge or why a  
9 juror would need help from an expert to understand and evaluate why victims have  
10 different reasons and responses to reporting abuse. Allowing Dr. Shelby to testify as to  
11 topic 5 would bolster the government's allegations and invade the province of the jury  
12 in deciding witness credibility about reporting reasons and reporting responses. In  
13 addition, based on the notice, it appears Dr. Shelby's proposed testimony is based on  
14 her personal experiences. Without knowing the sample size of her cases or the  
15 population size of reported, and more importantly, substantiated sexual abuse cases, the  
16 Court cannot conclude her experiences are sufficient to justify her conclusion. Thus,  
17 testimony regarding topic 5 should be excluded under Rule 702. Such testimony is also  
18 unfairly prejudicial as it is inflammatory on its face, and like to confuse issues and  
19 waste time.

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23       <sup>6</sup> Topic 5: Reasons why a victim of sexual assault and interpersonal violence  
24 might delay or forego reporting or engage in selective reporting or piecemeal reporting  
25 over time. The reasons may include, but will not be limited to, the following: fear of  
26 retaliation; belief that reporting will accomplish little to bring about safety; desire to  
27 avoid stigma; few mental health resources to cope with the demands of reporting;  
28 intense distress when remembering abusive episodes/avoidance of trauma-related  
topics; dissociative coping responses that interfere with memory processes; other  
neurobiological responses to trauma; desire to re-interpret sexual assault as a  
consensual act to avoid facing the reality of the abusive nature of the relationship; fear  
of not being believed; belief that one cannot change one's circumstances, but must  
merely endure them; and other reactions related to childhood, multiple, or extreme  
experiences of sexual assault/traumatic events.

1       As to topic 6<sup>7</sup>, Dr. Shelby's proposed testimony is about reasons why a victim  
 2 might remain in a relationship where the victim continues to suffer at the hands of the  
 3 abuser. The government fails to explain how a wide range of reasons for staying in a  
 4 relationship, is not common knowledge or why a juror would need help from an expert  
 5 to understand and evaluate why victims have different reasons for staying in a  
 6 relationship. Allowing Dr. Shelby to testify as to topic 6 would bolster the  
 7 government's allegations and invade the province of the jury in deciding witness  
 8 credibility about reasons for staying in a relationship. In addition, based on the notice, it  
 9 appears Dr. Shelby's proposed testimony is based on her personal experiences.  
 10 Without knowing the sample size of her cases or the population size of reported, and  
 11 more importantly, substantiated sexual abuse cases, the Court cannot conclude her  
 12 experiences are sufficient to justify her conclusion. Thus, testimony regarding topic 6  
 13 should be excluded under Rule 702. Such testimony is also unfairly prejudicial as it is  
 14 inflammatory on its face, and like to confuse issues and waste time.

15      As to topic 7<sup>8</sup>, Dr. Shelby's proposed testimony is about coping mechanisms.  
 16 The government fails to explain how a wide range of coping mechanisms, is not  
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18      <sup>7</sup> Topic 6: Reasons why a victim of sexual assault and trauma might remain in a  
 19 relationship, romantic or otherwise, where the victim continues to suffer at the hands of  
 20 the abuser. The reasons may include, but will not be limited to, staying in relationships  
 21 because of fear of further physical, sexual, or emotional abuse and/or retaliation for  
 22 leaving; having mental health conditions that make it more difficult for a person to end  
 23 the relationship; holding the maladaptive belief that violence/abuse is part of all  
 24 relationships; hoping that the abuser will stop and change for the better; having a  
 reduced sense of personal agency, such as the belief that there is little or nothing the  
 victim can do to escape the relationship; vulnerability to dependency on the abuser, in  
 cases where the abuser has isolated the victim and cultivated a strong sense of  
 dependency on the abuser; and holding cultural/religious beliefs that a person should  
 remain in a relationship despite the shortcomings or mistakes made by the person's  
 romantic partner.

25      <sup>8</sup> Topic 7: Coping mechanisms used by victims of sexual assault and other forms  
 26 of trauma, including but not limited to denial, wishful thinking, avoidance of the  
 27 assault- and trauma-related topics due to significant distress associated with these  
 28 recollections; use maladaptive problem-focused coping (e.g., trying to enhance safety  
 by acquiescing, or complying, or attempting to appease the abuser), maladaptive use of  
 emotion-focused coping (e.g., using strategies to endure one's suffering), and other  
 cognitive strategies, such as minimizing or rationalizing the abuser's behavior as less  
 egregious than is true or as beyond the control of the abuser.

common knowledge or why a juror would need help from an expert to understand and evaluate why victims have different coping mechanisms. Allowing Dr. Shelby to testify as to topic 7 would bolster the government's allegations and invade the province of the jury in deciding witness credibility about coping mechanisms. In addition, based on the notice, it appears Dr. Shelby's proposed testimony is based on her personal experiences. Without knowing the sample size of her cases or the population size of reported, and more importantly, substantiated sexual abuse cases, the Court cannot conclude her experiences are sufficient to justify her conclusion. Thus, testimony regarding topic 7 should be excluded under Rule 702. Such testimony is also unfairly prejudicial as it is inflammatory on its face, and like to confuse issues and waste time.

### III. CONCLUSION

For the reasons stated above, the Court should exclude Dr. Shelby's testimony.

Respectfully submitted,

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By /s/ *Angela C. C. Viramontes*

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